

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 532 of 1998
with
Civil Application No. 10085 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PRAJAPATI DHANABHAI

KACHARABHAI

Versus

PRAJAPATI TRIBHOVANDAS

KACHARABHAI

Appearance:

MR SURESH M SHAH for MR JA ADESHRA for appellant

MR SUREN M SHAH for Respondent

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 17/09/1999

ORAL JUDGEMENT

1. Admitted. Upon joint request of the learned advocates for the parties, the matter is taken up for final hearing today.

2. In this Appeal from Order, appellant herein has brought in challenge order dated 25.9.1998 recorded below notice of motion in Civil Suit No.279 of 1998 by learned

Chamber Judge, City Civil Court, Ahmedabad, whereby he has allowed the application and ordered to continue the ad-interim injunction granted earlier.

3. The suit in question was filed by the respondent herein inter alia claiming the relief of partition of the suit properties mentioned in Schedule A. Along with the suit, notice of motion was also moved and interim relief was sought for during the pendency of the suit.

4. The learned trial Judge, after hearing the parties, came to the prima facie conclusion and ordered as mentioned hereinabove.

5. Learned advocate Mr. Suresh M. Shah for Mr. J.A. Adeshra has contended that so far as the interim injunction granted qua property situated at Amraivadi is concerned, it may be modified by allowing the appellant to put up construction thereon and in that case he will not claim equity and the said order may be recorded without prejudice to the rights and contentions of both the parties.

6. Learned advocate Mr. Suren M. Shah for the respondent initially opposed the aforesaid contention but reluctantly has agreed that if interest of the respondent is safeguarded the order may be suitably modified by granting permission to the appellant to put up construction on the property situated at Amraivadi.

7. In view of the aforesaid state of affairs, upon the consensual statement, following order is passed:

(i) So far as injunction granted by the learned trial Judge qua all the properties, except the property situated at (Amraivadi) Bage-Firdoz, Taluka City, District Ahmedabad, T.P. No.27, Sub-Plot No. 107, admeasuring 508 sq.mt. bearing Municipal Census No.662/A, is confirmed.

(ii) So far as the property situated at (Amraivadi) Bage-Firdoz, Taluka City, District Ahmedabad, T.P. No. 27, Sub-Plot No. 107, admeasuring 508 sq.mt., bearing Municipal Census No.662/A is concerned, the appellant is permitted to put up construction on the remaining open plot subject to the following terms and conditions:

(a) The appellant shall put up construction on the remaining open plot of land after obtaining necessary permission from Ahmedabad Municipal

Corporation and after getting the plans approved.

- (b) The appellant shall not disturb the possession of one room which is on the suit plot and which is in possession of the respondent which is constructed on an approximate area of 108 sq.yd., according to Mr. Suren M. Shah, learned advocate for the respondent, and shall also not damage the said room.
- (c) The entire construction shall be at the cost and risk of the appellant.
- (d) The appellant shall not claim any equity on the basis of the construction which may be put up by him. The construction shall also be subject to the result of the suit.
- (e) The appellant shall also abide by all the directions which the trial Court may issue in the final judgment and decree in the suit as regards this new construction which the appellant may make on the open land.
- (f) It may be made clear that permission to put up construction on the open land is granted to the appellant without prejudice to the rights and contentions of both the parties which may be taken at the time of trial and the learned trial Judge shall decide all the contentions that may be raised by both the parties uninfluenced by whatever order is recorded hereinabove and the permission granted in favour of the appellant.

8. In the facts and circumstances of the case, the learned trial Judge shall also hear the matter as expeditiously as possible and shall try to dispose of the suit as early as possible and preferably on or before 30.4.2000.

9. In the result, the appeal succeeds in part with no order as to costs. Interim injunction recorded by the learned trial Judge is modified to the aforesaid extent.

10. In view of the order passed in Appeal from Order, notice issued in the Civil Application is discharged.

(karan)